

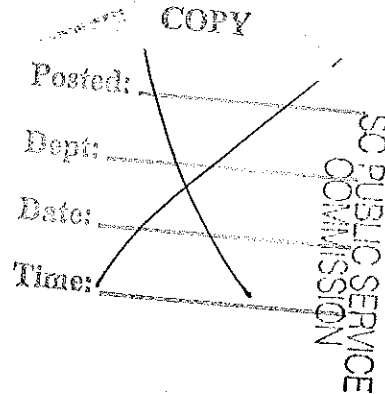
# ROBERT GUILD

Attorney at Law

314 Pall Mall • Columbia, South Carolina 29201 • 803-252-1419

Mr. Charles Terreni  
Chief Clerk  
Public Service Commission of South Carolina  
Synergy business Park, Saluda Building  
101 Executive Center Drive  
Columbia, SC 29210

April 14, 2008



2008 APR 14 PM 4:04

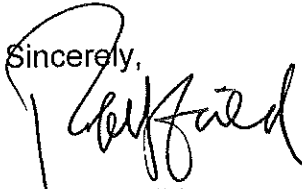
RECEIVED

Re: Application of Duke Energy Carolinas, LLC for Approval of Decision to Incur  
Nuclear Generation Pre-Construction Costs  
Docket No. 2007-440-E

Dear Mr. Terreni:

Enclosed please find for filing and consideration a Motion to Compel Discovery and Response to Motions for Protective Order on behalf of Friends of the Earth, together with Certificate of Service reflecting service upon all parties of record. I have also transmitted today an electronic copy of the attached testimony to all counsel.

With kind regards I am

Sincerely,  
  
Robert Guild

Encl.s  
CC: All counsel

## STATE OF SOUTH CAROLINA

(Caption of Case)

In the Matter of

Application of Duke Energy Carolinas, LLC for  
Approval of Decision to Incur Nuclear Generation  
Pre-Construction Costs

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COPY

Dept: SA.Date: 4/15/08Time: 4:00

COVER SHEET

DOCKET

NUMBER: 2007 - 440 - E

(Please type or print)

Submitted by: Robert GuildSC Bar Number: 2358Address: 314 Pall MallTelephone: 803 252 1419Columbia, SC 29201Fax: 803 252 1419

Other: \_\_\_\_\_

Email: bguild@mindspring.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

**DOCKETING INFORMATION** (Check all that apply)

- ☐ Emergency Relief demanded in petition      ☐ Request for item to be placed on Commission's Agenda expeditiously
- ☐ Other: \_\_\_\_\_

**INDUSTRY** (Check one)**NATURE OF ACTION** (Check all that apply)

- |  |  |  |  |
|--|--|--|--|
| <input checked="" type="checkbox"/> Electric         | <input type="checkbox"/> Affidavit                 | <input type="checkbox"/> Letter                            | <input type="checkbox"/> Request                   |
| <input type="checkbox"/> Electric/Gas                | <input type="checkbox"/> Agreement                 | <input type="checkbox"/> Memorandum                        | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Electric/Telecommunications | <input type="checkbox"/> Answer                    | <input checked="" type="checkbox"/> Motion                 | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Electric/Water              | <input type="checkbox"/> Appellate Review          | <input type="checkbox"/> Objection                         | <input type="checkbox"/> Resale Agreement          |
| <input type="checkbox"/> Electric/Water/Telecom.     | <input type="checkbox"/> Application               | <input type="checkbox"/> Petition                          | <input type="checkbox"/> Resale Amendment          |
| <input type="checkbox"/> Electric/Water/Sewer        | <input type="checkbox"/> Brief                     | <input type="checkbox"/> Petition for Reconsideration      | <input type="checkbox"/> Reservation Letter        |
| <input type="checkbox"/> Gas                         | <input type="checkbox"/> Certificate               | <input type="checkbox"/> Petition for Rulemaking           | <input type="checkbox"/> Response                  |
| <input type="checkbox"/> Railroad                    | <input type="checkbox"/> Comments                  | <input type="checkbox"/> Petition for Rule to Show Cause   | <input type="checkbox"/> Response to Discovery     |
| <input type="checkbox"/> Sewer                       | <input type="checkbox"/> Complaint                 | <input type="checkbox"/> Petition to Intervene             | <input type="checkbox"/> Return to Petition        |
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| <input type="checkbox"/> Transportation              | <input type="checkbox"/> Discovery                 | <input checked="" type="checkbox"/> Prefiled Testimony     | <input type="checkbox"/> Subpoena                  |
| <input type="checkbox"/> Water                       | <input type="checkbox"/> Exhibit                   | <input type="checkbox"/> Promotion                         | <input type="checkbox"/> Tariff                    |
| <input type="checkbox"/> Water/Sewer                 | <input type="checkbox"/> Expedited Consideration   | <input type="checkbox"/> Proposed Order                    | <input type="checkbox"/> Other:                    |
| <input type="checkbox"/> Administrative Matter       | <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest                           |  |
| <input type="checkbox"/> Other:                      | <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit             |  |
|  | <input type="checkbox"/> Late-Filed Exhibit        | <input type="checkbox"/> Report                            |  |

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2007-440-E

RECEIVED  
2008 APR 14 PM 4:05  
SC PUBLIC SERVICE  
COMMISSION

In the Matter of	)	
	)	
Application of Duke Energy Carolinas, LLC	)	<b>MOTION TO COMPEL DISCOVERY</b>
for Approval of Decision to Incur Nuclear	)	<b>FROM DUKE ENERGY BY</b>
Generation Pre-Construction Costs	)	<b>FRIENDS OF THE EARTH</b>
	)	

Pursuant to R. 103-832 to 834 of the Commission's Rules and Rules 33, 34 and 37 of the South Carolina Rules of Civil Procedure, Friends of the Earth ("FoE"), hereby moves to compel discovery from Duke Energy Carolinas, LLC ( hereafter, "Duke") sought in Interrogatories, Requests for Production, and Request for Entry served upon Duke on March 13, 2008 and substantially objected to by Responses dated April 7, 2008, and attached hereto as Exhibit 1.

By its response Duke objects to producing virtually all information sought regarding the costs of the proposed plant which is the very subject of this proceeding (Document Requests 3, 4, 5, 8, 12 and 13); the costs and availability of other alternatives to the proposed plant considered by Duke for supplying its generation needs," (Document Request 11); and potential sources of financing the proposed plant through joint ownership (Document Request 9), and federal financial assistance (Document Requests 6 & 7). As to each of these Duke generally asserts, "Duke Energy Carolinas objects to this request on the basis that it is overbroad, unduly burdensome, and seeks documents

which contain highly sensitive, proprietary, commercially valuable trade secret information.” In addition, Duke refuses FoE’s request for entry on the proposed plant site for purposes of inspection and photography, asserting that such request is “irrelevant” and “overly burdensome” and could not be accomplished before the then-scheduled April 17, 2008, date for the merits hearing.

Pursuant to Rule 26(a) of the South Carolina Rules of Civil Procedure, FoE is entitled to discovery from Duke employing interrogatories, production of documents and entry upon property for inspection and other purposes. Such discovery may be obtained

regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Id., Rule 26(b)(1).

Pursuant to S.C.Code Section 58-33-225, Duke’s application herein must include the very information sought in discovery:

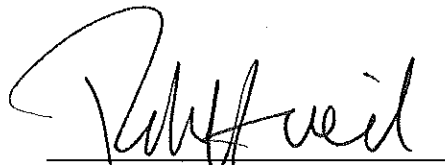
- (C) In a project development application, the utility shall:
  - (1) describe the plant being considered and shall designate:
    - (a) the anticipated generation capacity (or range of capacity) of the plant; and
    - (b) the projected annual capacity factors or range of factors of the plant;
  - (2) provide information establishing the need for the generation capacity represented by the potential plant and the need for generation assets with the indicative annual capacity factors of the potential plant;
  - (3) provide information establishing the reasonableness and prudence of the potential fuel sources and potential generation types that the utility is considering for the plant; and
  - (4) provide such other information as may be required to establish that the decision to incur preconstruction costs related to the potential nuclear plant is prudent considering the information known to the utility at the time and considering the other alternatives available to the utility for supplying its generation needs.

Such discovery information is essential to testing Duke's claim that a "preponderance of the evidence" established that "the decision to incur preconstruction costs for the plant is prudent." S.C.Code Section 58-33-225(D).

Thus, Duke bears the burden of proving the prudence of its decision to incur these costs for the proposed William States Lee, III Nuclear Station in light of the need for this generation capacity, the reasonableness and prudence of this type of generation, and the other alternatives available to the utility for supplying its generation needs. *Id.* Such cost and alternatives information must be disclosed by Duke to the Commission, and to its rate-paying customers, if it chooses to invoke the extraordinary relief of pre-construction cost authorization from this Commission.

WHEREFORE, for the foregoing reasons, Intervenor Friends of the Earth respectfully requests that the Commission grant an order compelling discovery from the Applicant Duke Energy Carolinas, LLC.

April 14, 2008

A handwritten signature in black ink, appearing to read "Robert Gould", is written over a horizontal line.

Robert Gould  
314 Pall Mall  
Columbia, SC 29201  
(803) 252-1419

ATTORNEY FOR FRIENDS OF THE EARTH

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2007-440-E**

In Re:	)	
	)	
Application of Duke Energy Carolinas, LLC	)	<b>DUKE ENERGY</b>
For Approval of Decision to Incur Nuclear	)	<b>CAROLINAS, LLC'S</b>
Generation Pre-Construction Costs	)	<b>RESPONSES TO FRIENDS</b>
	)	<b>OF THE EARTH'S FIRST</b>
	)	<b>DISCOVERY REQUESTS</b>
	)	

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**GENERAL OBJECTIONS**

Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or the "Company") objects to Friends of the Earth's ("FOE") Interrogatories, Requests for Production, and Request for Entry to the extent they are overbroad, unduly burdensome, and seek attorney/client privileged information. Numerous discovery requests by FOE seek highly confidential, commercially-sensitive proprietary information. As a result, Duke Energy Carolinas is simultaneously filing a motion for a protective order. Subject to and without waiving these objections, the Company responds as follows:

**REQUEST FOR ENTRY**

Duke Energy Carolinas objects to FOE's request to be permitted entry upon the lands and premises of the subject location for FOE to inspect, measure, survey, photograph, test, or sample the site. The requested visit is irrelevant, would be overly burdensome, and outside the scope of discovery for this proceeding. The purpose of this proceeding is to determine whether it is prudent to incur preconstruction development costs and to preserve the nuclear generation option. Therefore, an inspection at this stage is not relevant to the proceeding. In addition, the deadline for responding to the request is the date of the hearing and well after the deadlines for filing testimony in the case.

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2007-440-E

In the Matter of	)	
	)	
Application of Duke Energy Carolinas, LLC	)	<b>MOTION TO COMPEL DISCOVERY</b>
for Approval of Decision to Incur Nuclear	)	<b>FROM DUKE ENERGY BY</b>
Generation Pre-Construction Costs	)	<b>FRIENDS OF THE EARTH</b>
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which contain highly sensitive, proprietary, commercially valuable trade secret information." In addition, Duke refuses FoE's request for entry on the proposed plant site for purposes of inspection and photography, asserting that such request is "irrelevant" and "overly burdensome" and could not be accomplished before the then-scheduled April 17, 2008, date for the merits hearing.

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regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Id., Rule 26(b)(1).

Pursuant to S.C.Code Section 58-33-225, Duke's application herein must include the very information sought in discovery:

- (C) In a project development application, the utility shall:
  - (1) describe the plant being considered and shall designate:
    - (a) the anticipated generation capacity (or range of capacity) of the plant; and
    - (b) the projected annual capacity factors or range of factors of the plant;
  - (2) provide information establishing the need for the generation capacity represented by the potential plant and the need for generation assets with the indicative annual capacity factors of the potential plant;
  - (3) provide information establishing the reasonableness and prudence of the potential fuel sources and potential generation types that the utility is considering for the plant; and
  - (4) provide such other information as may be required to establish that the decision to incur preconstruction costs related to the potential nuclear plant is prudent considering the information known to the utility at the time and considering the other alternatives available to the utility for supplying its generation needs.

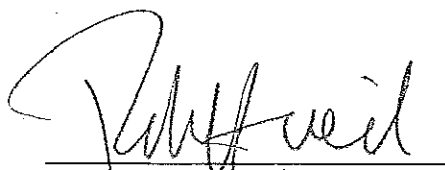


Such discovery information is essential to testing Duke's claim that a "preponderance of the evidence" established that "the decision to incur preconstruction costs for the plant is prudent." S.C.Code Section 58-33-225(D).

Thus, Duke bears the burden of proving the prudence of its decision to incur these costs for the proposed William States Lee, III Nuclear Station in light of the need for this generation capacity, the reasonableness and prudence of this type of generation, and the other alternatives available to the utility for supplying its generation needs. *Id.* Such cost and alternatives information must be disclosed by Duke to the Commission, and to its rate-paying customers, if it chooses to invoke the extraordinary relief of pre-construction cost authorization from this Commission.

WHEREFORE, for the foregoing reasons, Intervenor Friends of the Earth respectfully requests that the Commission grant an order compelling discovery from the Applicant Duke Energy Carolinas, LLC.

April 14, 2008



Robert Guild  
314 Pall Mall  
Columbia, SC 29201  
(803) 252-1419

ATTORNEY FOR FRIENDS OF THE EARTH

Therefore, it is unlikely that any information resulting from an entry would be obtained in time to be presented during the hearing. Therefore, granting such a request would not lead to the discovery of admissible evidence.

### **DOCUMENTS TO BE PRODUCED**

1. All documents which were relied upon or referred to in answering the interrogatories propounded herewith.

**RESPONSE:** Duke Energy Carolinas identifies the pre-filed testimony on behalf of Duke Energy Carolinas previously served on FOE and the specific responses which follow.

2. All documents which are intended to be offered in evidence in this proceeding as well as all drafts, notes or working papers related to evidence to be offered in this proceeding.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is overbroad, unduly burdensome, and seeks documents protected by the attorney/client privilege. Subject to and without waiving these objections, in addition to any exhibits attached to pre-filed testimony, the Company encloses responsive documents described in the following responses.

3. All documents related to the cost of the proposed plant and necessary land and support facilities.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is overbroad, unduly burdensome, and seeks documents which contain highly sensitive, proprietary, commercially valuable trade secret information. See motion for protective order filed with the Commission.

4. All documents related to the anticipated pre-construction costs of the proposed plant, including, but not limited to those enumerated in the subject Application.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is overbroad, unduly burdensome, and seeks documents which contain highly confidential, commercially-sensitive, and trade secret information. See motion for protective order filed with the Commission.

5. All documents related to the cost of the Westinghouse AP 1000 power reactor proposed to be constructed at the plant.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is overbroad, unduly burdensome, and seeks documents which contain highly confidential, commercially-sensitive, and trade secret information. See motion for protective order filed with the Commission.

6. All documents related to the funding to be sought or obtained from the US Department of Energy or other federal source in connection with the combined construction and operating license application or other licensing activity with the US Nuclear Regulatory Commission for the proposed plant.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is overbroad with regard to the term "other federal source," and that it seeks information that is publicly available to FOE. Duke Energy Carolinas further objects to this request on the basis that it is unlikely to lead to the discovery of admissible evidence because federal or other funding for costs are not used as a basis for the Company's Application in this proceeding. Subject to and without waiving these objections, the Company asserts that the United States

Department of Energy has not yet solicited any applications for funding. If and when it does, the Company intends to evaluate the solicitation and, if doing so is in Duke Energy Carolinas's best interests, to apply for funding.

7. All documents related to loan guarantees or other the funding to be sought or obtained from the US Department of Energy or other federal source in connection with licensing and construction of the proposed plant.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is overbroad with regard to the term "other federal source," and that it seeks information that is publicly available to FOE. Duke Energy Carolinas further objects to this request on the basis that it is unlikely to lead to the discovery of relevant admissible evidence because federal or other funding for costs are not used as a basis for the Company's Application in this proceeding. Subject to and without waiving these objections, the Company asserts that the United States Department of Energy has not yet solicited any applications for funding. If and when it does, the Company intends to evaluate the solicitation and, if doing so is in Duke Energy Carolinas's best interests, to apply for funding.

8. All documents related to the estimated costs of the Westinghouse AP 1000 power reactor to be constructed by any other utility.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is overbroad, unduly burdensome, and seeks information that is not within the Company's possession or control. See motion for protective order filed with the Commission.

9. All documents related to the withdrawal from joint or shared ownership by Southern Company or other entities in the proposed plant.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is overbroad, unduly burdensome, and seeks documents protected by the attorney/client privilege. Subject to and without waiving these objections, Duke Energy Carolinas directs FOE to the enclosed document numbered DUKE000001.

10. All documents related to plans for spent fuel storage and disposal or nuclear waste disposal or nuclear waste management related to the proposed plant.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is unlikely to lead to the discovery of relevant admissible evidence because none of the requested pre-construction costs included in the Company's Application would be attributed to spent fuel or nuclear waste storage, disposal, and/or management. Subject to and without waiving these objections, Duke Energy Carolinas directs FOE to the attached links:

<http://adamswebsearch2.nrc.gov/idmws/ViewDocByAccession.asp?AccessionNumber=ML071580939>

<http://www.nrc.gov/reactors/new-licensing/col/lee.html>

11. All documents related to the costs and availability of other alternatives to the proposed plant considered by Duke for supplying its generation needs.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is overbroad, unduly burdensome, and seeks documents which contain highly confidential, commercially-sensitive, and trade secret information. See motion for protective order filed with the Commission. Subject to and without waiving these objections, Duke Energy Carolinas provides the following list of source documentation supporting costs for supply side resources

evaluated in the Company's 2007 Annual Plan quantitative analysis. Without waiving its objection, Duke Energy Carolinas also produces a redacted version of the Company's 2007 Annual Plan numbered DUKE000002 through DUKE000149.

	Source Documentation		
	Capital Costs (\$/kw) / Heat Rate	Variable O&M Costs (\$/MWH)	Fixed O&M (\$/kw-yr)
Supercritical Pulverized Coal (800 MW)	Actual manufacturer equipment along with engineering procurement and construction (Hitachi, Alstom, Toshiba)	Duke Energy in-house experience in operating SCPC Units	Duke Energy in-house experience in operating SCPC Units
Natural Gas Combined-Cycle with Duct Firing and Inlet Cooling CTs	Actual manufacturer equipment along with engineering procurement and construction (L&L, CH2MHill, Flour, Shaw & Zackery)	Duke Energy in-house experience in operating CTCC	Duke Energy in-house experience in operating CTCC Units
Natural Gas Simple-Cycle Combustion Turbine	Actual manufacturer equipment along with engineering procurement and construction (S&L)	Duke Energy in-house experience in operating CT Units	Duke Energy in-house experience in operating CT Units
Nuclear AP 1000 (2 x 1,117 MW Units)	Actual manufacturer equipment along with engineering procurement and construction (Westinghouse)	Based on 2007 Fixed & Variable Study by DE on current McGuire Nuclear Station	Nuclear Business Planning Based on Industry Top Plan (Westinghouse)
Integrated Coal Gasification Combined Cycle (630 MW)	GE/Betchel	GE/Betchel	GE/Betchel

12. All documents related to the prudence of the decision to incur the preconstruction costs related to the proposed plant including the information known to Duke which is the basis for the decision to incur such costs.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is overbroad, unduly burdensome, and seeks documents which contain highly confidential, commercially-sensitive, and trade secret information. See motion for protective order filed with the Commission.

13. All documents related to the projected or estimated cost of electricity, expressed in levelized cents per kwh, or otherwise, expected to be generated by the proposed plant over its lifetime.

**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is overbroad, unduly burdensome, and seeks documents which contain highly confidential, commercially-sensitive, and trade secret information. See motion for protective order filed with the Commission.

### **INTERROGATORIES**

1. Give the names and addresses of persons known to Duke or its counsel to be witnesses concerning the facts of the case and indicate whether or not any written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

**RESPONSE:** Duke Energy Carolinas has pre-filed direct testimony for the following witnesses:

**Janice D. Hager, Managing Director, Integrated Resource Planning and Environmental Strategy, Duke Energy Corporation**

**Dhiaa M. Jamil, Group Executive and Chief Nuclear Officer**

**Ellen T. Ruff, President, Duke Energy Carolinas LLC**

**526 South Church Street  
Charlotte, North Carolina**

Duke Energy Carolinas also has pre-filed rebuttal testimony for the following witness:

**Julius A. Wright, President  
J. A. Wright & Associates, Inc.  
3037 Loridan Way  
Atlanta, Georgia**

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of Duke or its counsel that relate to the claim or defense in the case.

**RESPONSE:** Duke Energy Carolinas directs FOE to the pre-filed direct and rebuttal testimony on record with the Commission, as well as documents produced in response to the requests above, including the redacted 2007 Annual Plan.

3. List the names and address of any expert witness whom Duke proposes to use as a witness at the trial of the case.

**RESPONSE:** Julius A. Wright, President, J. A. Wright & Associates, Inc., 3037 Loridan Way, Atlanta, Georgia.

4. For each person known to Duke to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

**RESPONSE:** Duke Energy Carolinas directs FOE to the pre-filed testimony on record with the Commission.

5. Assuming the estimated costs of the Westinghouse API000 power reactor projected by others, including but not limited to Florida Power & Light, were applied to the proposed plant what would be the projected or estimated cost of electricity, expressed in levelized cents per kwh, or otherwise, expected to be generated by the proposed plant over its lifetime?

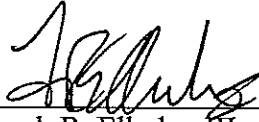
**RESPONSE:** Duke Energy Carolinas objects to this request on the basis that it is



overbroad, unduly burdensome, and seeks analyses and documents that don't exist based upon projections of Florida Power & Light and "others." Duke Energy Carolinas has not done such analysis and does not have any documents that are responsive to this request.

This the 7<sup>th</sup> day of April, 2008.

Robinson, McFadden & Moore, P.C.



---

Frank R. Ellerbe, III  
Bonnie D. Shealy  
1901 Main Street, Suite 1200  
Post Office Box 944  
Columbia, South Carolina 29202  
Telephone (803) 779-8900  
[fellerbe@robinsonlaw.com](mailto:fellerbe@robinsonlaw.com)  
[bshealy@robinsonlaw.com](mailto:bshealy@robinsonlaw.com)

and

Lawrence B. Somers, Associate General Counsel  
Duke Energy Corporation  
Post Office Box 1006  
Charlotte, North Carolina 28201-1006  
Telephone: 704-382-8142

Attorneys for Duke Energy Carolinas, LLC

STATE OF SOUTH CAROLINA

(Caption of Case)

In the Matter of

Application of Duke Energy Carolinas, LLC for  
Approval of Decision to Incur Nuclear Generation  
Pre-Construction Costs

BEFORE THE  
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OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2007 - 440 - E

(Please type or print)

Submitted by: Robert Guild

SC Bar Number: 2358

Address: 314 Pall Mall  
Columbia, SC 29201

Telephone: 803 252 1419

Fax: 803 252 1419

Other: \_\_\_\_\_

Email: bguild@mindspring.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

**DOCKETING INFORMATION** (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: \_\_\_\_\_

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
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BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2007-440-E

RECEIVED  
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SC PUBLIC SERVICE  
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for Approval of Decision to Incur Nuclear	)	<b>EARTH TO MOTIONS FOR</b>
Generation Pre-Construction Costs	)	<b>PROTECTIVE ORDER BY DUKE</b>
	)	<b>AND WESTINGHOUSE</b>

Pursuant to R. 103-832 to 834 of the Commission's Rules and Rules 33, 34 and 37 of the South Carolina Rules of Civil Procedure, Friends of the Earth ("FoE"), hereby responds in opposition to Motions for Protective Order by Duke Energy Carolinas, LLC (hereafter, "Duke") and Westinghouse Electric Company, LLC and Stone & Webster, Inc. (hereafter, "Westinghouse") seeking to protect from public disclosure to affected Duke ratepayers virtually all information regarding the costs of the proposed William States Lee, III Nuclear Station which is the very subject of this application by Duke to incur pre-construction plant costs. Where Duke has chosen to invoke the extraordinary relief of pre-construction cost authorization from this Commission it bears the burden of proof by a preponderance of the evidence of: 1) the need for this generation capacity, 2) the reasonableness and prudence of this type of generation, 3) the prudence of this proposed plant in light of the other alternatives available to the utility for supplying its generation needs. S.C.Code Section 58-33-225(D).

Moreover, as moving parties, Duke and Westinghouse bear the burden of proof of an entitlement to a protective order, withholding from public disclosure information relevant to the reasonableness and prudence decision before the Commission and threatening significant adverse rate impacts on Duke ratepayers. Substantial public policy considerations weigh strongly against maintaining secrecy for the cost information regarding the generation plant choice advocated by Duke and the costs of alternatives for meeting ratepayers' energy needs.

FoE expert Peter A. Bradford explained:

The fact is that no Duke consumer today has effective notice of what the proposed units will cost. This behavior is in sharp contrast with current proceedings in Florida under a statute which Mr. Wright considers comparable to the new South Carolina law. In Florida this year, both Florida Power and Light and Progress Energy included cost estimates and the associated rate impacts for their two nuclear power plant proposals in their prefiled testimony and in their petitions. These are public documents and have been widely reported. They describe total rate increases of more than 50% ascribable to the nuclear stations alone during the years that they are being built.

Keeping such crucial information secret undermines the integrity of the regulatory process and is fundamentally inconsistent with the "regulatory compact" that the utility industry asserted with such vehemence throughout the 1990s.

When - as in South Carolina - utilities are vertically integrated and recover their investments through a regulated rate base, customers have no choice among suppliers. Instead, they depend on regulatory processes in which they are entitled to participate to keep costs reasonable. One basic and essential element of a fair regulatory process is complete notice of what is under consideration in particular proceedings. An essential aspect of that notice is the magnitude of potential rate and bill increases. Without notice of that aspect, customers have diminished incentive to participate in such an expensive and complex proceeding. Without effective customer participation, the Commission is denied the benefit of public involvement, and the public is denied an effective voice in a matter of potentially fundamental economic importance to the state. The secrecy can serve no competitive purpose because Duke will not be selling the output into a competitive power market. It can serve no real purpose in negotiations with nuclear power plant vendors because a range of estimates can be used for this proceeding as has been done in Florida. Indeed, findings by this

commission as to cost containment or maximum allowable costs might strengthen Duke's hand in such negotiations. In the "public convenience and necessity" hearings that were used to approve power plant construction in the 1970s, I am unaware of any cases in which the estimated cost of the plant was concealed from the public

Surrebuttal Testimony of Peter A. Bradford for Friends of the Earth, pp. 11-13. Thus, in the pending, comparable, Florida commission proceedings, involving the same proposed Westinghouse AP 1000 reactor designs, cost information has been disclosed to the ratepaying public. Likewise, in former Commissioner Bradford's extensive experience, such crucial cost information was never withheld from public disclosure in the earlier era of nuclear plant construction approvals. It should not be withheld here and now.

FoE vigorously disputes the claims that the subject plant cost information constitute legitimate "trade secrets" as defined by S.C.Code Section 39-8-20(5). Nevertheless, it is Duke's choice to invoke this statutory pre-construction cost approval process; and it is Duke's burden to prove entitlement to such authority by a preponderance of the evidence. If Duke chooses not to meet such burden of proof with competent, admissible, and public evidence, then its clear choice is to forego such extraordinary remedy, and defer seeking Commission relief until such time as it is prepared to disclose such information.

WHEREFORE, for the foregoing reasons, Intervenor Friends of the Earth respectfully requests that the Commission grant an order denying the Motions for Protective Order by the Applicant Duke Energy Carolinas, LLC. and Westinghouse Electric Company, LLC and Stone & Webster, Inc.

April 14, 2008

A handwritten signature in black ink, appearing to read "Robert Guild", is written over a horizontal line.

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ATTORNEY FOR FRIENDS OF THE EARTH

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2007-440-E

In the Matter of

Application of Duke Energy Carolinas, LLC  
for Approval of Decision to Incur Nuclear  
Generation Pre-Construction Costs

**Certificate of Service**

I hereby certify that on this date I served the above Motion to Compel and Response by e-mail and by placing copies of same in the United States Mail, first-class postage prepaid, addressed to:

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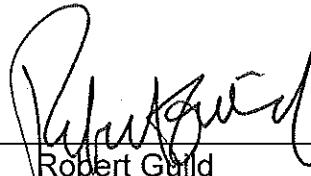
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